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Standing Committee on Regulations and Private Bills

First Report 1986

2nd Session 33rd Parliament
35 Elizabeth II



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CORRIGENDUM

Page 18

Last paragraph, line one should read:

"As well, it is possible to imagine a case where an applicant would . . ."

Page 23

Second last paragraph beginning:

"From the file of . . ." — should be deleted.

HOUSE OF COMMONS

REPORT A. CALLAGHAN
Chairman

STANDING COMMITTEE
ON REGULATIONS AND PRIVATE BILLS

FIRST REPORT
1986

BRUCE CHARLTON

NICKY FRANKS

BARBARA CHURCHILL

JOHN H. BARNES

ALAN DICKINSON

KEITH WATSON

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JOHN BARNES

James Mackay
Clerk of the Committee

Andrew C. Doherty
Secretary to the Committee

2nd Session, 33rd Parliament
35 Elizabeth II

MEMBERSHIP AND STAFF OF THE COMMITTEE

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Chairman

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Clerk of the Committee

Andrew C. Dekany
Counsel to the Committee

Philip Kaye
Research Officer, Legislative Research Service



The Honourable Hugh Edighoffer, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Private Bills has the honour to present its First Report for the Second Session of the Thirty-Third Parliament and commends it to the House.

A handwritten signature in dark ink, appearing to read "Robert V. Callahan".

Robert V. Callahan, M.P.P.
Chairman

Queen's Park
December 1986

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I INTRODUCTION

Your Committee presents this Report in accordance with its permanent reference, section 12 of the Regulations Act, R.S.O. 1980, chapter 446. Section 12 provides that every regulation stands permanently referred to your Committee and that your Committee "shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly."

The Terms of Reference of your Committee direct that in examining the regulations regard shall be had to the following guidelines:

- (1) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (2) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (3) Regulations should be expressed in precise and unambiguous language.
- (4) Regulations should not have retroactive effect unless clearly authorized by statute.
- (5) Regulations should not exclude the jurisdiction of the courts.
- (6) Regulations should not impose a fine, imprisonment or other penalty.
- (7) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (8) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (9) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

Because of the agenda and its work on private bills and because of the backlog of the entire regulations for 1985 left as a result of the passing away of the former Counsel to the Committee, your Committee has been unable to submit its Report until now.

In this Report, your Committee reports its observations, opinions and recommendations on all the regulations which came into force in the year 1985. Although all of your Committee's time has been taken up with the examination of these regulations, this Report also briefly summarizes the broader issues which have been studied by its predecessor committees as described in previous reports. Now that it has caught up with the backlog of regulations, your Committee intends to examine these issues and will report to you thereon.

* * *

II COUNSEL TO THE COMMITTEE

Your Committee acknowledges the important and dedicated role played by Lachlan R. MacTavish as Counsel to your Committee since April, 1977. His long career of service to the House as Legislative Counsel and then as Counsel to the Standing Committee on Regulations earned him the respect and friendship of all who knew him. The previous reports of the Standing Committee bear witness to the guidance and vision which he provided.

The task of serving as Counsel to your Committee is a specialised one. Regulations are laws. Although some of the members of the Standing Committee from time to time may be lawyers, your Committee relies on Counsel to examine each and every regulation in order to determine which regulations should be brought to your Committee's attention.

In examining the regulations, Counsel determines the following:

- (a) the authority in the parent act for the making of the regulation,
- (b) who is given the authority to make the regulation,
- (c) whether any approval is needed for the passing of the regulation, and if so by whom,
- (d) the date the regulation comes into force, and whether it has any retroactive or retrospective effect,
- (e) whether the regulation was published in the Ontario Gazette within one month after filing, as required by the Regulations Act,
- (f) whether the regulation is in compliance with the guidelines contained in the Standing Committee's terms of reference,
- (g) whether there is a possible infringement of a right guaranteed under the Charter of Rights and Freedoms. Although this is not a guideline at the present time, the former counsel to the Committee

had raised the Charter as a criterion of scrutiny in one of his earlier reports and this practice has been continued, and

- (h) where the parent act has been changed since the coming into force of the regulation, Counsel has checked to determine if any part of the regulation is inconsistent with the amended or substituted provisions of the act.

Counsel also assists your Committee in assessing the explanations made by the various ministries. Your Committee relies heavily on the advice of Counsel as its expert who can contend with the experienced solicitors and counsels in the ministries whose work your Committee is charged with scrutinising. Because the composition of the Standing Committee changes from time to time over the years, Counsel provides continuity and guidance to the Committee in its ongoing work of assessing the effectiveness of the system of regulations in Ontario and keeping up to date with developments in other jurisdictions.

* * *

III ISSUES RAISED IN PREVIOUS REPORTS OF THE STANDING COMMITTEE

Your Committee intends to continue the work of its predecessor committees in studying the effective operation of the system of regulations in Ontario and as part of that work examining developments in other jurisdictions. Although the constraints of time have not allowed your Committee to form any observations, opinions or recommendations in this regard, summarized below are the issues which have been the subject of previous reports of predecessor committees.

A. The form of regulations

The following questions have been raised concerning the form of regulations:

1. Can the form of regulations as published in The Ontario Gazette be improved upon from the public's point of view?
2. Should the headings of the regulations be expressed more precisely?
3. Should each regulation have a short explanatory note as is the practice in the case of federal regulations and statutory instruments?
4. Should the statutory authority for a regulation be more specifically identified?

B. Statutory proclamations

In one of the reports, the Standing Committee noted that at some time consideration should be given to expanding the Committee's work to include statutory proclamations and that the Committee might make recommendations to improve the system in that regard.

C. Meetings of the Standing Committee between sessions

Under section 12(1) of the Regulations Act, R.S.O. 1980, chapter 446, the Standing Committee is given authority to sit during the session of the Legislature. In one of the reports of the Standing Committee, a recommendation was made that the terms of reference of the Committee be extended to include power to meet at the call of the Chairman between the sessions of the Legislature to deal with emergency matters which, if left to wait until the next session, would involve a delay resulting in injustice.

D. Amendments to the Regulations Act and regulations thereunder

The Standing Committee has observed that section 22 of the Interpretations Act, R.S.O. 1980, chapter 219, which deals with regulations, would be more appropriately located in the Regulations Act.

E. Notice and Comment procedures

Notice and Comment refers to the procedure of giving advance notice to the public prior to the making of a regulation in order to give members of the public an opportunity to comment thereon. Predecessor committees have recommended that the present system in Ontario should be continued whereby no advance notice or opportunity for comment is given except where a particular statute provide for such a procedure. However, predecessor committees have also recommended that more emphasis be placed on incorporating suitable procedures in appropriate acts, and that succeeding committees should continue to study the subject of Notice and Comment, especially the programmes in other jurisdictions such as the regulatory agendas of the federal government.

F. Regulations under the Planning Act, 1983 and the Parkway Belt Planning and Development Act

Regulations made under these two acts for the most part exempt specific lands from the provisions of zoning regulations. As is shown by the statistical information, these regulations are more numerous than

regulations made under any other Acts. From time to time, it has been suggested that these regulations be dealt with in some other manner than by filing with the Registrar of Regulations and publication in the Ontario Gazette.

G. The Charter of Rights and Freedoms

In its first report for 1984, the Committee considered that it had the additional duty of ensuring that the regulations which it examines do not contravene the Charter of Rights and Freedoms. However, your Committee's terms of reference do not, as yet, so provide. Therefore, although your Committee has noted regulations where it felt there may be a potential problem under the Charter, it has done nothing more than bring the matter to the attention of the ministry concerned.

Your Committee will be devoting its attention to the above issues as well as others and will be reporting to the House its observations, opinions and recommendations thereon.

* * *

IV STATISTICS FOR THE CALENDAR YEAR 1985

During the calendar year 1985 there were 703 regulations filed with the Registrar of Regulations pursuant to the Regulations Act. The following table presents the totals for the past nine years:

<u>Year</u>	<u>Regulations</u>
1977	975
1978	1,007
1979	962
1980	1,141
1981	884
1982	837
1983	815
1984	840
1985	703

The 1985 regulations occupy 1,726 double-column pages in The Ontario Gazette. The table below enables comparisons to be made with other years:

<u>Year</u>	<u>Pages</u>
1977	1,797
1978	1,965
1979	2,568
1980	2,138
1981	1,952
1982	2,021
1983	2,245
1984	3,667
1985	1,726

The following table lists the Acts under the authority of which five or more regulations were filed during 1985:

<u>NAME OF ACT</u>	<u>NUMBER OF REGULATIONS</u>
Administration of Justice Act	14
Assessment Act	6
Charitable Institutions Act	5
Conservation Authorities Act	6
Courts of Justice Act, 1984	15
Crop Insurance Act (Ontario)	30
Drugless Practitioners Act	9
Education Act	17
Environmental Assessment Act	24
Environmental Protection Act	13
Executive Council Act	12
Family Benefits Act	8
Farm Income Stabilization Act	7
Farm Products Marketing Act	19
Game and Fish Act	30
General Welfare Assistance Act	7
Health Insurance Act	18
Health Protection and Promotion Act, 1983	6
Highway Traffic Act	47
Homes for the Aged and Rest Homes Act	6
Land Titles Act	10
Liquor Licence Act	6
Local Roads Boards Act	10
Local Services Boards Act	8
Mental Health Act	5
Milk Act	13
Municipal Boundary Negotiations Act, 1981	13
Niagara Escarpment Planning and Development Act	5
Parkway Belt Planning and Development Act	24
Planning Act, 1983	90
Provincial Offences Act	9
Provincial Parks Act	12
Public Service Superannuation Act	5
Registry Act	10
Vocational Rehabilitation Services Act	5

More detailed statistical information may be found in volume 119-7 of The Ontario Gazette published on February 15th, 1986 which shows the regulations contained in Revised Regulations of Ontario, 1980, regulations under the Parkway Belt Planning and Development Act and certain regulations under the Planning Act shown in the Schedule to Revised Regulations of Ontario, 1980, and subsequent regulations filed to the 31st day of December 1985.

Your Committee observes that there appears to be a deliberate attempt to restrict the number of regulations being made, reflecting an attitude that laws should only be made when it is necessary to create new rights or new liabilities. The term "deregulation" has been used in the past several years to express this concept. The process of "deregulation" seems to have been slowly taking place in Ontario in recent times.

* * *

**V OBSERVATIONS, OPINIONS AND RECOMMENDATIONS CONCERNING
PARTICULAR REGULATIONS**

Of the 9 guidelines which your Committee is directed to have regard to in examining the regulations, which guidelines are set out on page 1 of this report, your Committee found that only 4 guidelines have been transgressed by regulations filed in 1985. These guidelines are as follows:

- (2) Regulations should be in strict accord with the statute conferring of power.
- (3) Regulations should be expressed in precise and unambiguous language.
- (4) Regulations should not have retrospective effect unless clearly authorized by statute.
- (6) Regulations should not impose a fine, imprisonment or other penalty.

Your Committee sets out below a summary of the regulations in question. It must be emphasized that in most cases the observations, opinions and recommendations expressed relate to a specific provision or provisions of the regulation in question. The rest of the regulation has been found to meet the guidelines.

**Guideline (2): REGULATIONS SHOULD BE IN STRICT ACCORD WITH
THE STATUTE CONFERRING OF POWER.**

This guideline is a broad one. Your Committee has found that regulations which fail to meet this guideline can be categorized in at least the following 4 categories:

- 1) Regulations which contain certain provisions for the making of which there is no authority in the parent statute. Regulations in this category are as follows:**

**Ontario Regulations 48/85, 285/85, and 645/85
under the Farm Income Stabilization Act**

The above regulations prescribe the base price, stabilization price, and farm product receipts for winter wheat for the 1983-84 crop year, for

apples for the 1983 crop year, and for soybeans for the 1984 crop year, respectively.

Section 6(1)(e) of the Act authorizes the making of regulations "establishing, from time to time, a stabilization price or prices respecting a farm product to which a plan applies obtained by adjusting 95 percent of the base price thereof by an index calculated in such manner as the Commission may prescribe in the regulations to reflect the estimated cash-cost of production of the farm product in the year for which the stabilization price or prices are established as compared with the average cash-cost of production for the five years immediately preceding that year". (emphasis added)

No index as referred to in the foregoing passage has been prescribed by any regulation for any of the above farm products.

In the case of Ontario regulation 48/85, we also note the provision in section 6(4) of the Farm Income Stabilization Act which states:

"... where, under a plan, the stabilization price exceeds the farm product receipts, the Commission, subject to the regulations, shall, at the time or times prescribed in the regulations, pay to those persons enrolled in the plan the difference between the stabilization price and the farm product receipts respecting any farm product under the plan marketed by such persons". (emphasis added)

However, there is no regulation prescribing the time or times for payment.

Counsel from the Legal Services Branch of the Ministry of Agriculture and Food has advised that the above matters are being examined as part of the Ministry's current review of all regulations under the Act, and that he would contact your Committee's Counsel as soon as he was able.

Ontario Regulation 69/85 under the Farm Products Marketing Act

The above regulation prescribes a new form of application for a licence as a processor of vegetables, replacing the form prescribed by Regulation 388 of R.R.O. 1980.

The form requires the applicant to enclose a completed financial responsibility form, financial statements and a cheque for \$200 payable to the Processing and Vegetable Financial Protection Board. The form does not state what the \$200 is for, nor whether the applicant can recover the \$200 at some time in the future. Apart from this regulation, there does not appear to be any other regulation under the Farm Products Marketing Act authorizing the requirement for payment of the \$200 nor prescribing the form of "financial responsibility form".

The Director of the Legal Services Branch of the Ministry of Agriculture and Food has advised that the authority to collect an application fee is found in subsection 5(1) of Ontario Regulation 348/84 under the Farm Products Payments Act and the regulation making power under that Act. Although this is the case, there appears to be a conflict with section 3(4) of Regulation 388 of R.R.O. 1980 which states that "A licence in Form 2 (which is the licence applied for by the application in Form 1) shall be issued to a processor without charge." Further explanation was requested from the Director who suggested that the common law rule leges posteriores priores contrarias abrogant would apply, i.e. that where two Acts are inconsistent or repugnant, the later will be read as having impliedly repealed the earlier. He added, however, that to clear up any ambiguity an amendment to Regulation 388 of R.R.O. 1980 could be made. Your Committee recommends that such an amendment be made.

Ontario Regulation 94/85 amending Regulation 102
of R.R.O. 1980 under the Chiropody Act

The Chiropody Act does not appear to contain authority for charging registration fees which Regulation 102 provides for. Even though the provisions imposing registration fees are not the subject of O. Reg. 94/85,

your Committee's mandate authorizes it to express its observations, opinions and recommendations concerning regulations which it has previously considered since every regulation stands permanently referred to your Committee.

Your Committee also observes that Regulation 102 prescribes different renewal fees for different classes of registrants.

Explanation was sought with respect to both these points from the Legal Services Branch of the Ministry of Health whose Counsel advised as follows. Firstly, the Ministry's Counsel agreed that there was no express authority to charge initial registration fees but submitted that clauses 3(a) and 3(o) of the Chiropody Act might be resorted to as a justification for such a charge. Clause 3(a) provides that the Board of Regents under the Chiropody Act may make regulations

"... for the admission of chiropodists to practise in Ontario and for the registration of all persons so admitted and for the issuing of certificates of registration."

Clause 3(o) provides that the Board may make regulations respecting any matter necessary or advisable to carry out effectively the intent and purpose of the Act.

Your Committee recommends that, where a fee is to be charged, the enabling Act should expressly authorize the imposition of such a fee. The Ministry's Counsel has further advised that there is currently underway a Health Professional Legislation Review that is examining all health profession statutes with the object of formulating uniform regulatory schemes and authorizing the matters raised by the Committee.

The Ministry's Counsel also satisfactorily explained the background of and reasons for the different renewal fees and advised that the Ministry hoped to eliminate the differential in a few years. Your Committee observes that it would be desirable for the Act to expressly authorize the charging of different fees.

Ontario Regulation 154/85 under the Highway Traffic Act

The above regulation amends O. Reg. 744/82 under the Highway Traffic Act dealing with vehicle permits by adding section 23a. The amendment is a very specific one providing for the imposition of a penalty where "a cheque, part or all of which is in payment of a vehicle-related fee or tax is not honoured" within the prescribed time (emphasis added). This provision appears to somewhat exceed the authority contained in sections 5(1) (g) and 5(2) of the Act which only authorize the imposition of a penalty where "a cheque tendered as payment for any fee is dishonoured" and do not refer to a cheque in payment of a "tax".

Counsel from the Office of Legal Services of the Ministry of Transportation and Communications has advised that a recommendation will be made to amend section 5(2) of the Act to include a reference to "tax".

Ontario Regulation 262/85 under the Farm Products Marketing Act

The above regulation establishes a plan "for the control and regulation of the producing and marketing of sheep and wool within Ontario".

Under section 6(1)(a) of the Farm Products Marketing Act the Lieutenant Governor in Council is only authorized to establish such a plan for the regulation of the "marketing" of a farm product and not its "producing". Section 6(1)(b) of the Act allows the Lieutenant Governor in Council to make regulations amending any plan that is already "established" to provide for the regulation of the "producing" of the farm product regulated under the plan. However, in this case section 6(1)(b) would not apply because the regulation does not amend an established plan, but rather establishes the plan.

The Director of the Legal Services Branch of the Ministry of Agriculture and Food has advised that the Act is dated for amendment in the fall of 1986 and that a clarification of the Act will be made if necessary. Your Committee recommends that such a clarification be made.

Ontario Regulations 263/85, 473/85 and 506/85 under the
Farm Products Marketing Act

Counsel has written to the Director of Legal Services of the Ministry of Agriculture and Food inquiring as to the authority for the provisions in the regulations which state that the regulations apply to the production and marketing of the farm products in question, since section 8(1)(16) of the Act appears only to authorize the Farm Products Marketing Board to make regulations for the control and regulation of the marketing of a regulated product.

The Director of Legal Services has replied citing a number of sections of the Act authorizing the making of regulations dealing with specific aspects of production. Although his opinion was that the regulations were authorized, he advised that as the Act was being amended the above comments would be considered. In your Committee's opinion an amendment should be made to the Act to remove any ambiguity.

Ontario Regulation 427/85 under the Agricultural Associations Act

The above regulation designates a certain association as a body corporate under the Act.

Section 2 of the Act names certain associations, societies and organizations as bodies corporate under the Act as well as "such other associations, societies, institutes or organizations as the Lieutenant Governor in Council designates". However, there is no provision in the Act which actually authorizes the Lieutenant Governor in Council to make regulations designating such associations, societies, institutes or organizations. The language contained in section 2 of the Act is merely descriptive and does not actually authorize the making of the regulation itself.

The above observation also applies to the provisions contained in section 19 of the Act which provide that certain exhibitions and fairs and "such other organizations as are designated by the Lieutenant Governor in Council are corporate bodies" under the Act.

The Director of the Legal Services of the Ministry of Agriculture and Food has advised that the Act is undergoing extensive review and the above comments will be considered.

Your Committee recommends that the Act be amended to expressly authorize the making of regulations in question.

Ontario Regulation 550/85 under the Child and Family
Services Act, 1984

The above regulation was made by the Lieutenant Governor in Council and contains 115 sections and 30 forms.

Although most of the provisions meet the Committee's guidelines, there does not appear to be any authority in the Act for deeming the Minister to be "a child welfare authority" for the purposes of entering into an agreement to meet the special needs of a child. Section 30(2) and 31(2) of the Act clearly provide for the making of such an agreement with the Minister, but the statutory scheme does not appear to authorize the making of regulations deeming the Minister to be a child welfare authority for the purposes of entering into such agreements.

Nor does there appear to be any authority for section 33 of the regulation which authorizes the Minister to require (emphasis added) that a special needs agreement be entered into where a residential service is provided to a child. Section 30(2) and 31(2) of the Act appear to be permissive only and not mandatory when they provide that a person and the Minister "may" enter into a special needs agreement.

The Director of the Legal Services Branch of the Ministry of Community and Social Services has agreed with the above observations. He advised that the Office of the Legislative Counsel pointed out the lack of authority at the time that the provisions were drafted and the Ministry agreed at that time to introduce amendments to the Act to provide the necessary authority. The Director further advised that these amendments are now being prepared.

Ontario Regulations 570/85 and 571/85 under
the Courts of Justice Act, 1984

The above regulation 570/85 amends the rules of the Provincial Court (Family Division) and revises the forms prescribed thereunder.

Form 27B is the form of affidavit to be sworn by a person or persons making application for the adoption of a child. Paragraph 6 of that form reads as follows:

"I/we have not and to the best of my/our knowledge no other person has made, given or received payment or agreed to do so in relation to any of the following:

- this adoption
- the placement for this adoption
- the negotiations or arrangements with a view to this adoption
- the giving of consent to this adoption.

except those permitted by the Child and Family Services Act, and regulations made under it".

Although section 159 of the Child and Family Services Act, 1984 prohibits anyone from giving, receiving or agreeing to give or receive a payment or award of any kind in connection with the above "matters" except as permitted under that Act and regulations made under it, there does not appear to be any express provision in the Child and Family Services Act, 1984 which directs the court not to make an adoption order where section 159 has been contravened. The above-quoted provisions of paragraph 6 of Form 27B appear to go beyond matters in respect of practice and procedure when they require the applicant to put such information before the court.

As well, it is possible to imagine a case where an would applicant be unable to swear to the statements contained in paragraph 6 of the affidavit as a result of knowledge the applicant had about someone else contravening section 159 of the Act, even though the applicant had nothing to do with the contravention and was acting in complete good faith. This could result in the applicant being

prohibited from proceeding with the adoption even though he or she had not breached the Act.

The above observations also apply to the corresponding form under Ontario Regulation 571/85, which amends the rules of practice and procedure of the Unified Family Court.

Your Committee is awaiting a response to the above observations from the Rules Committee of the Provincial Court (Family Division).

Ontario Regulation 623/85 under the Environmental Protection Act

The above regulation regulates the use of containers. In particular, section 7(1) of the regulation provides that:

"No person shall advertise or display a brand of carbonated soft drink in a non-refillable container in an off-premises advertisement unless it is also advertised or displayed in a refillable container in the same off-premises advertisement."

Although section 136(6)(c) of the Act provides for the making of regulations "requiring and regulating the stocking, display, sale or offering for sale of any beverage. . . .", advertising as provided for in section 7(1) of the regulation, does not necessarily fall within the terms "stocking, display, sale or offering for sale". Furthermore, section 136(6)(e) of the Act, which authorizes the making of regulations regulating "advertising or display" is limited to the advertising or display of the price of a beverage, of amounts payable as deposits and for return of containers, and of advertising or display of the regulations.

In order to clearly have authority for the making of section 7(1) of the regulation, section 136(6)(c) of the Act should expressly provide for "advertising" in addition to "stocking, display, sale or offering for sale".

Counsel from the Legal Services Branch of the Ministry of the Environment has advised that this very provision in the regulation is proposed to be amended and that when the amendment is prepared the Ministry will reconsider the statutory authority in the light of your Committee's observations.

- 2) Regulations which contain provisions which sub-delegate power or authority to another person or body without there being express provision for doing so in the parent statute.

Ontario Regulations 3/85, 109/85 and 576/85
under the Environmental Assessment Act

Ontario Regulation 3/85 exempts from the Environmental Assessment Act the setting aside and acquiring of land for provincial parks and the management of such parks. The effect of condition 6 of the regulation is that the Minister of the Environment may revoke the exemption in respect of a proposed plan or project by written notice to the Minister of Natural Resources, directing that an environmental assessment be prepared for the plan or project.

Section 29(b) of the Environmental Assessment Act provides for suspension or revocation of an exemption by an order of the Minister of the Environment with the approval of the Lieutenant Governor in Council or such Minister of the Crown as may be designated by him. The intent of the Legislation appears to be that if an exemption is to be revoked, such revocation is to be done by a further regulation. Insofar as condition 6 of the regulation allows the Minister of the Environment to revoke an exemption merely by giving a written notice to the Minister of Natural Resources, that condition may not be in strict accord with the Act.

The above observations also apply to Ontario Regulations 109/85 and 576/85.

Counsel for the Ministry of the Environment has expressed a contrary view concerning the conditions in question. In his opinion, there is a distinction between revoking an exemption for which there is a specific procedure in the Act and applying a condition to determine whether or not a particular thing fits within the exempt undertaking. In his view, the Environmental Assessment Act does permit conditions such as these to be placed on exemptions. Notwithstanding the Ministry's interpretation, in order to avoid ambiguity we recommend that the Act be amended to deal with the problem of removing particular plans or projects from the blanket exemptions granted by regulations of this type. At the very least, your Committee recommends that the Act be amended to remove any doubt as to the authority for imposing conditions of this kind which have the effect of partially revoking the exempting regulation.

We also observe that Reason D of Ontario Regulation 3/85 refers to "the supporting material filed with this exemption order". No such supporting material has been filed in the Office of the Registrar of Regulations. If the material was filed in some other location, that location should be clearly identified in the regulation in order to avoid ambiguity and to enable members of the public who may wish to inspect such material to have access to it.

Counsel in the Legal Services Branch of the Ministry of the Environment has advised that the supporting material is contained in the Ministry's public record files. The Ministry's Counsel further advises that in light of your Committee's concerns it may be appropriate to mention in the regulation itself the existence of the public record file or other documents and publications of the Ministry where such material can be located.

Ontario Regulation 4/85 under the Game and Fish Act

The above regulation amends parts of Regulation 415 of R.R.O. 1980 dealing with classes of licences for trapping and dealing in furs. It appears to have been made under the authority of section 92.1 of the Act which authorizes the Lieutenant Governor in Council to make regulations "governing the issue, form, renewal, transfer, refusal and cancellation of licences or any class of them, prescribing their duration, territorial limitations, terms and conditions and the fees payable therefor. . .".

The regulation prohibits the holder of a Form 3 licence and certain other persons from being the holder of a Form 1 or 1A licence "except with the written permission of the regional director of the administrative region of the Ministry of Natural Resources in which the licence is issued". There is a similar discretion given to regional directors under section 9(4) of Regulation 415 which is also amended by this regulation and which prohibits the holder of a licence under the Fur Farms Act and certain other persons from holding a licence in Form 1, 1A or 3, except with the written permission of the regional director.

No guidelines or criteria are specified as to how the regional directors are to exercise their discretion. This appears to be an unauthorized sub-delegation of the authority conferred on the Lieutenant Governor in Council to make regulations governing the issue and refusal of licences.

The Legal Services Branch of the Ministry of Natural Resources has agreed that there should be specified in the regulation, guidelines or criteria as to how the regional directors are to exercise this discretion and that the Ministry will be taking steps to have the problem rectified.

Ontario Regulation 47/85 under the Provincial Parks Act

The above regulation regulates the landing of airplanes in provincial parks by prohibiting such landing without a landing permit issued by the Ministry or the Ministry's permission.

There are no guidelines set out as to how the Ministry of Natural Resources is to exercise its discretion in granting or withholding permission. The Legal Services Branch of the Ministry has advised that the setting out of such guidelines in the regulation would be difficult and cumbersome by reason of the fact that the guidelines would vary from park to park because of the individual requirements of each park. Nevertheless, the Legal Services Branch has stated that, because of the Committee's concern, the Ministry with the assistance of the Registrar of Regulations will endeavour to amend the regulation to remedy the problem.

Ontario Regulation 288/85 under the Crop Insurance Act (Ontario)

The above regulation made by the Crop Insurance Commission of Ontario amends the Regulation 204 of R.R.O. 1980 entitled "crop insurance plan for coloured beans" by amending the definition of "coloured beans" in section 3(b) of Regulation 204.

Section 3(b), as amended, defines certain varieties of beans to be coloured beans "and such other varieties as may be declared insurable from time to time by the Commission". The Committee questions the authority of the Commission to declare a crop, or a variety of a crop, as insurable. Section 7(1)(a) of the Act gives the power to make regulations designating any agricultural crop as an insurable crop to the Lieutenant Governor in Council. Alternatively, the Committee observes that the declaration of a variety of coloured beans as insurable would in effect be amending the plan by extending the coverage. Such

an amendment should be done by way of a regulation made as provided for in section 5(1) of the Act with the approval of the Lieutenant Governor in Council and published in The Ontario Gazette.

The Director of the Legal Services Branch of the Ministry of Agriculture and Food has advised that it is planned to review the statute and its regulations and that the appropriate changes will be made.

3) Regulations which have not been brought into force in accordance with the provision contained in the parent statute.

Ontario Regulation 73/85 under the Conservation Authorities Act

This regulation revokes 2 of the Schedules to Regulation 165 of R.R.O. 1980 which describe areas "in which, in the opinion of the Authority, the control of flooding or pollution or the conservation of land may be affected by the placing or dumping of fill." Because the file of the Registrar of Regulations only contained a copy of the approval of the Lieutenant Governor in Council, Counsel wrote to the Legal Services Branch of the Ministry of Natural Resources asking for evidence of the actual making of the regulation by the Conservation Authority.

The Ministry's Legal Services Branch has advised that there is no evidence that officers of the Conservation Authority have signed the regulation. However, they further advise that the Conservation Authority is in the process of making a new regulation which will revoke previous regulations and be substituted therefor.

From the file of the Registrar of Regulations it appears that Ontario Regulation 254/85 was made by the Lieutenant Governor in Council rather than by the Minister of Revenue.

Ontario Regulation 429/85 under the Ministry of Health Act

The above regulation was made by the Minister of Health, apparently under section 12(f) of the Ministry of Health Act, and as such would require the approval of the Lieutenant Governor in Council, which was not obtained. Since

drawing this to the attention of the Ministry of Health, the Ministry has advised that the regulation has been corrected by a regulation approved by His Honour the Lieutenant Governor in Council on June 6, 1986.

Ontario Regulation 496/85 under the Ambulance Act

The above regulation substitutes a new form of Form 3, the form of licence to operate an ambulance service.

Although the file of the Registrar of Regulations contains a certified copy of the approval of the Lieutenant Governor in Council, the file does not contain a copy of the regulation signed by the Minister of Health or other evidence of the making of the regulation. The document which should have created the regulation and which bears the signature of the Minister, shows the Minister as recommending the regulation rather than actually making it.

The Ministry's Legal Branch has expressed the opinion that the regulation was in fact made by the Minister since the Minister put his mind to the making of the regulation and then put the regulation before the Lieutenant Governor in Council, as shown by the use of the words "recommended by . . . ". Although the Committee appreciates the force of this argument, it recommends that where a regulation is to be made by a Minister the document making the regulation which is signed by the Minister should expressly state that the Minister makes, rather than merely recommends, the regulation.

Ontario Regulation 551/85 under the Child and Family Services Act, 1984

The above regulation was made by the Minister of Community and Social Services, presumably under the authority of section 197(4) of the Act which provides that:

"The Minister shall prescribe,

- (a) standards of services; and
- (b) procedures and practices to be followed by societies, for the purposes of subsection 15(4)."

Section 15(4) of the Act provides that a society shall provide the prescribed standard of services in its performance of its functions and follow the prescribed procedures and practices.

Although most of the provisions of the regulation relate to practice and procedure, there are 2 sections, namely 2(4) and 3, which under the statutory scheme apparently should have been made by the Lieutenant Governor in Council rather than by the Minister.

Section 199(d) of the Act authorizes the Lieutenant Governor in Council to make regulations "prescribing the form in which reports are to be made under subsection 71(3)". Section 2(4) of this regulation, which was made by the Minister and not the Lieutenant Governor in Council, prescribes that very form.

Section 199(e) of the Act authorizes the Lieutenant Governor in Council to make regulations "respecting the manner in which the register referred to in subsection 71(5) is to be kept". Sections 3(1) and 3(2) of this regulation appear to do that very thing by prescribing the form in which information reported to the register shall be recorded, and the length of time the Director shall maintain information in the register.

The Director of the Ministry's Legal Services Branch has expressed the opinion that authority for the making of sections 2(4) and 3 of the regulation is conferred by the Act on both the Minister under section 197(4) as "prescribing a procedure" and on the Lieutenant Governor in Council under sections 199(d) and 199(e) of the Act as described above. He has stated that the inclusion of sections 2(4) and 3 in Ontario Regulation 551/85 was for the purpose of keeping, as far as possible, all related procedural matters in the one Regulation.

Your Committee observes that it is desirable to have all related procedural matters in one regulation for ease of reference. However, the Committee is of the opinion that by specifically authorizing the Lieutenant Governor in Council to make regulations concerning these matters, the Legislature intended that such regulations receive a higher level of scrutiny by reason of having to be considered by the Lieutenant Governor in Council. For this reason, the Committee recommends that the matters in sections 2(4) and 3 of the regulation be the subject of a regulation made by the Lieutenant Governor in Council rather than by the Minister.

4) **Regulations which contain provisions in conflict with the parent statute.**

Ontario Regulation 5/85 under the Game and Fish Act

The above regulation amends parts of the O. Reg. 673/82 dealing with traps. Section 1(1) of this regulation amends section 1(6) of O. Reg. 673/82 by generally prohibiting the setting of leg-hold traps (except for foot snares) for fur-bearing animals with certain exceptions.

There is a general prohibition in section 30(2) of the Game and Fish Act against trapping or attempting to trap animals by means of a body-gripping trap or leg-hold trap, from which holders of a licence to hunt or trap fur-bearing animals, and farmers in certain circumstances are exempted by sections 30(3) (a) and (b) of the Act.

We observe that the regulation contains no cross-reference to the exemption for licence holders and farmers which is contained in the Act. This could result in ambiguity and possibly even lead to an allegation that the regulation is inconsistent with the Act.

The Legal Services Branch of the Ministry of Natural Resources has agreed with this observation and has advised that the Ministry will be taking steps to have this problem rectified.

Ontario Regulation 160/85 under the Architects Act, 1984

The above regulation amends O. Reg. 517/84 by prescribing the manner of serving or delivering a notice or document under O. Reg. 517/84 under the Architects Act, 1984.

Section 7(1)6. of the Act, under which this regulation appears to have been made, provides for the making of regulations respecting matters of practice and procedure before committees as long as they are not inconsistent with the Act or the Statutory Powers Procedure Act. Under section 50a(2) of amended O. Reg. 517/84 a copy of a notice or document that is mailed is deemed to be received on the tenth day following the day on which it was mailed, unless the contrary is shown. To the extent that the term "document" includes a "final

decision and order", this provision appeared to be inconsistent with section 18 of the Statutory Powers Procedure Act which provides that a copy of a final decision and order which is mailed is deemed to be received on the fifth day after the mailing. This point may be significant for determining the time within which an appeal may be brought from such final decision and order.

Counsel from the Policy Development Division of the Ministry of the Attorney General has expressed the opinion that as a matter of statutory interpretation, the mandatory specific provision of the Statutory Powers Procedure Act prevails over the general provision of the regulation. He further expressed the opinion that the two provisions can stand together if section 50a of the regulation is read, as it was intended, that a notice or document in respect of a committee, other than a notice or document required to be given or sent under the Statutory Powers Procedure Act, may be served or delivered, etc.

Your Committee recommends that to avoid any ambiguity section 50a of the regulation be amended to so provide.

Ontario Regulation 551/85 under the Child and Family Services Act, 1984

As described earlier, this regulation prescribes procedures and practices to be followed by societies.

There is a provision in one subsection of the regulation which appears to be in conflict with section 71(3) of the Act. Section 71(3) of the Act requires that once a society has verified information that a child is or may be suffering or has suffered abuse, the society "shall forthwith (emphasis added) report it to the Director in the prescribed form." However, section 2(2) of the regulation provides that the society "shall make the report within fourteen days after the information is verified by the society unless the Director extends the period of time". The period of 14 days or any longer period as extended by the Director would appear to be inconsistent with the requirement that the report be made "forthwith". The provisions of section 15(4) of the Act which allow the Minister to prescribe procedures and practices to be followed by societies, would not allow him to prescribe procedures and practices which are in conflict with the Act. See Re Krossel and Director of Vocational Rehabilitation Services Branch, Department of Social and Family Services, (1972) 1 O.R. 895 (C.A.).

The Director of Legal Services of the Ministry of Community and Social Services has agreed that there is a conflict between section 2(2) of the regulation and section 71(3) of the Act, and has advised that he will be recommending to the Ministry that section 71(3) of the Act be amended to delete the word "forthwith".

**GUIDELINE 3: REGULATIONS SHOULD BE EXPRESSED IN PRECISE
AND UNAMBIGUOUS LANGUAGE.**

Regulations which offend this guideline generally fall into one of the following two categories.

- 1) Regulations containing provisions which are expressed in an imprecise or vague manner.**

Ontario Regulation 27/85 under the Charitable Institutions Act, and
Ontario Regulation 28/85 under the Homes for the Aged and Rest Homes Act

Ontario Regulation 27/85 increases the maximum basic rate and the maximum preferred accommodation rate that can be charged to residents who receive extended care services in approved charitable institution.

The class or level of care or amenity described as "preferred accommodation" is not defined in the regulation which is amended by this regulation, even though section 12(l) of the Charitable Institutions Act authorizes the making of regulations:

" . . . prescribing the maximum amounts that may be charged to residents in approved charitable institutions for any prescribed class or level of care, services, items and amenities provided in the charitable institutions".

Section 12(j) of the Act authorizes the making of regulations prescribing, among other things:

"Classes or levels of such care, services, items, amenities and recreational opportunities in accordance with the needs of the residents

and providing for the assessment and classification of the residents for the purpose of determining the class or level of care, services and items required by them."

The same observation applies to Ontario Regulation 28/85 under the Homes for the Aged and Rest Homes Act.

The Legal Services Branch of the Ministry of Community and Social Services has advised that there is no legislative provision defining the term "preferred accommodation" although there are adequate controls insofar as the Ministry is concerned. The Legal Services Branch has further advised that any attempt to provide a more specific definition would be difficult to implement and in the final analysis would cause substantial disruption to what has become a well established practice.

Your Committee appreciates the above position of the Ministry. However, we see no way to avoid interpreting the words of the statute other than as requiring as a pre-condition to prescribing an amount that there be a prescribed class or level of care.

Ontario Regulation 146/85 under the Health
Protection and Promotion Act, 1983

The above regulation amends certain provisions of O. Reg. 381/84 dealing with pools.

Section 17(3)(b) of the regulation as amended appears to be ambiguous when it states that in certain circumstances "the maximum number of bathers referred to in the Table in subsection (2) shall be increased to sixty", since there is no number identified in the Table as a "maximum number".

Counsel from the Legal Branch of the Ministry of Health has agreed that clause 17(3)(b) ought to be amended and has advised that such an amendment will probably be made later this year.

Ontario Regulations 570/85 and 571/85
under the Courts of Justice Act, 1984

Form 27 of Ontario Regulation 570/85 is the form of consent to adoption by a parent. It requires the parents to initial the following statement contained in paragraph 7 of the form:

"I further understand that after twenty-one days have passed, I may not be allowed to withdraw this consent unless I receive the court's permission, and then only if the child has not been placed for adoption".

This statement does not appear to completely accurate insofar as section 133(2) of the Child and Family Services Act prevents the late withdrawal of consent even with the court's permission "where the child has been placed with a person for adoption and remains in that person's care". (emphasis added)

One of the grounds for a finding under the Child and Family Services Act, 1984 that a child is in need of protection, contained in Form 20(A) entitled "protection application", is that:

". . . the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is 12 years of age or older, with the child's consent, to be dealt with under this Part." (emphasis added)

No part of the Child and Family Services Act, 1984 under which the application is to be made has been referred to elsewhere in the form. To avoid ambiguity "this Part" could be replaced by the words "Part III of the Act".

The above observations also apply with respect to the various forms prescribed under Ontario Regulation 571/85, which amends the rules of practice and procedure of the Unified Family Court, since the forms are identical.

Your Committee is awaiting a reply with respect to these observations from the Rules Committee of the Provincial Court (Family Division).

- 2) **Regulations which contain an apparent typographical or drafting error which renders a provision in the regulation ambiguous or unclear.**

Ontario Regulations 161/85, 271/85, 331/85 and 512/85 under
the Provincial Offences Act

The above regulations amend Regulation 817 of R.R.O. 1980 by adding additional schedules in which words or expressions are prescribed for use in certificates of offence, offence notices, or summonses to designate various offences. The regulations contain a number of typographical or drafting errors which have been pointed to the Ministry of the Attorney General. That Ministry in turn passed on the observations to the ministries having responsibility for the Acts which create the offences.

- a) 161/85 (Health Protection and Promotion Act)

All of the Committee's observations concerning the regulation were confirmed by Counsel to the Ministry of Health who advised that it will be recommended to the Public Health Branch of the Ministry that the necessary amendments to the Regulation under the Provincial Offences Act and under the Health Protection and Promotion Act should be proposed at a suitable time in the near future.

- b) 271/85 (Provincial Parks Act and Game and Fish Act)

The Legal Services Branch of the Ministry of Natural Resources has advised that steps are being taken to correct the errors which your Committee has pointed out to the Ministry.

- c) 331/85 (Toronto Area Transit Operating Authority Act)

The Committee's observation concerning the ambiguity in the heading of the regulation is concurred in by Counsel to the Ministry of Transportation and Communications who has advised that a correction will be made at the first available opportunity.

d) 512/85 (Gasoline Handling Act)

Counsel from the Legal Services Branch of the Ministry of Consumer and Commercial Relations has agreed with your Committee's observations concerning two of the items in this regulation and has advised that an amending regulation will be prepared.

Ontario Regulation 618/85 under Part IX of the
Environmental Protection Act

The above regulation deals with "Spills".

Section 10(1)3.A. of the regulation should refer to the costs of the action "assessed" rather than "taxed" since "assessed" is now the proper term under the Rules of Civil Procedure. The term "assessed" has properly been used in section 9.3.(iv)B. and in section 10(1)3.B. of the regulation.

Section 25(1)1. of the regulation refers to "a person referred to in section 21". Section 21 of the regulation prescribes a class of spill which is exempt from part IX of the Act. It does not refer to a person.

Section 25(3) of the regulation refers to "the provision of condition 2 in subsection (1) requiring the insurer to follow the instructions of the Corporation or Her Majesty in right of Ontario". Condition 2 does not so require. It merely states "the insurer must give notice of any such action to the Corporation".

Counsel from the Legal Services Branch of the Ministry of the Environment has advised that the above errors will be corrected sometime in the fall of this year. He added that the errors are not causing problems in practice.

Ontario Regulation 654/85 under the
Occupational Health and Safety Act

The above regulation is entitled "designated substance - asbestos on construction projects and in buildings and repair operations". A passage in section 9(1)(c)(iii) of this regulation appears to contain a typographical error

which could result in ambiguity. The provision apparently should read "removal of air-handling equipment" rather than "removal or air-handling equipment".

The Legal Services Branch of the Ministry of Labour has advised that steps are being taken to correct the error.

Ontario Regulation 694/85 under the
Municipal Boundary Negotiations Act, 1981

The above regulation is an Order in Council giving effect to a certain agreement between The Corporation of the Village of Hilton Beach and The Corporation of the Township of Hilton dated the 5th day of June, 1985.

It appears that the phrase "Township of Hilton" as used in the first line of each of section 3(2)(a)(i) and section 3(2)(a)(ii) of the Order in Council is incorrect and should be replaced by the phrase "Village of Hilton Beach".

The General Counsel of the Ministry of Municipal Affairs has confirmed the Committee's observation that an error was made in the drafting of the regulation. Your Committee recommends that the error be corrected.

Ontario Regulation 699/85 under the Agricultural Development Finance Act

The above regulation amends certain portions of Regulation 11 of R.R.O. 1980 dealing with interest rates on deposits at the Province of Ontario Savings Office. The following provision does not appear to be expressed in precise and unambiguous language.

In view of the amendments to section 1 of Regulation 11 of R.R.O. 1980 made by this regulation, a corresponding amendment should be made to the section reference in the 8th line of section 2, so that it reads "subsection 2 of section 1" rather than "paragraph 1 of section 1".

The Director of the Legal Services Branch of the Ministry of Revenue has advised that this oversight will be corrected on the next revision of the regulation.

Guideline 4: REGULATIONS SHOULD NOT HAVE RETROSPECTIVE
EFFECT UNLESS CLEARLY AUTHORIZED
BY STATUTE.

Any regulation which is expressed to come into force on a day prior to its filing with the Registrar of Regulations is retrospective or retroactive and infringes the guideline unless it is authorized to be so made by the parent statute. Regulations which conflict with this guideline are as follows:

Ontario Regulation 62/85 under the Credit Unions and
Caisses Populaires Act

The above regulation prescribes certain classes of assets for the purposes of subsection 92(1) of the Act, and enacts provisions respecting the matching of terms of investments and loans with terms of deposits.

The regulation was filed on February 4, 1985 but provides that it comes into force on February 1, 1985. There does not appear to be any authority in the Act for making the regulation retroactive.

The Director of the Ministry of Consumer and Commercial Relations advised that the above observation was forwarded to the Ministry's Financial Institutions Division, now the Ministry of Financial Institutions, who explained that the delay in filing appears to have been due to an intervening weekend and the time taken to transmit the regulations from the Cabinet Office. Furthermore, the Credit Unions Branch has advised that no action adverse to the rights of any credit union that hinges on the retroactive period has been taken by the Credit Unions Branch.

Ontario Regulation 167/85 under the Official Notices Publications Act

The above regulation prescribes the rates payable for publication of matters in The Ontario Gazette as well as the rates payable for copies of The Ontario Gazette and provisions for refunds.

The regulation, which was made on March 28, 1985 and filed on April 2, 1985, is expressed to come into force on the first day of April, 1985. Your Committee can find no authority in the Act for making the regulation retroactive and has so advised the Ministry of Government Services.

Ontario Regulation 170/85 under the Executive Council Act

The above Order in Council prescribes the duties of the Minister of Skills Development.

The Order in Council was made on March 25, 1985 and filed on April 4, 1985. Section 2 of the Order in Council provides that "effective on the first day of April, 1985" the powers and duties described therein are transferred to the Minister of Skills Development. As a result, the Order in Council is effective retroactively. Your Committee can find no authority in the Act for making the Order in Council retroactive and has so advised the Deputy Clerk of the Executive Council.

Ontario Regulation 207/85 under the Family Benefits Act

The above regulation amends Regulation 318 of R.R.O. 1980 by increasing the amount used in calculating the monthly budgetary requirements of an applicant or a recipient under subclause 12(5)(e)(i) of the regulation.

The regulation, which was made on May 8, 1985 and filed on May 10, 1985, is expressed to come into force retroactively on the 1st day of May, 1985. Your Committee can find no authority in the Act for making the regulation retroactive.

The Legal Services Branch of the Ministry of Community and Social Services has explained the delay in filing and has assured your Committee that every attempt will be made by the Branch to ensure that regulatory amendments are filed prior to the effective dates.

Ontario Regulation 264/85 under the Executive Council Act

The above regulation is an Order in Council transferring the administration of certain Acts from the Minister of Consumer and Commercial Relations to the Minister of Municipal Affairs and Housing. The Order in Council, which was made on May 23, 1985 and filed on May 24, 1985, is expressed to be effective May 22, 1985, 2 days prior to its coming into force. Your Committee can find no authority in the Executive Council Act for making the Order in Council retroactive and has so advised the Deputy Clerk of the Executive Council.

Ontario Regulation 307/85 under the Employment Standards Act

The above regulation was made on May 30, 1985 and filed on June 5, 1985. The regulation provides that it comes into force on the first day of June, 1985 and is therefore retroactive. There does not appear to be any authority in the Act for making the regulation retroactive.

The Director of the Legal Branch of the Ministry of Labour has thoroughly examined this matter and advises that a procedure has been implemented which will ensure that this will not happen again.

Ontario Regulations 374/85, 375/85, 388/85

396/85 and 422/85 under the Executive Council Act

Each of the above regulations are Orders in Council assigning the powers and duties of ministers or transferring the administration of certain Acts to ministers as set out therein. They all expressed to be effective retroactively back to June 26, 1985. There does not appear to be any authority in the Executive Council Act for making the Orders in Council retroactive. However, June 26, 1985 was the day on which the Cabinet was announced and sworn in and therefore it would not have been physically practicable to actually make any of these Orders in Council on June 26.

Ontario Regulation 426/85 under the Commodity Boards and
Marketing Agencies Act

The above regulation provides that it "shall be deemed to have come into force on the first day of August, 1985". The regulation was made on August 16, 1985 and filed on August 26, 1985.

The regulation amends Regulation 112 of R.R.O. 1980 by increasing the maximum amounts of certain levies or charges.

Your Committee can find no authority in the Act for making regulations retroactive and has so advised the Ministry of Agriculture and Food.

Ontario Regulation 702/85 under the Police Act

The above regulation provides for the payment of allowances to members of the police force.

The regulation, which was made on December 19, 1985 and filed on December 30, 1985 is expressed to come into force retroactively on the first day of December, 1985. Your Committee can find no authority in the Act for making the regulation retroactive.

The Director of Legal Services of the Ministry of Solicitor General has explained that unfortunately there were delays in processing the regulation to its ultimate conclusion and has expressed his assurance that every possible effort would be made to avoid this happening in the future.

Guideline 6 REGULATIONS SHOULD NOT IMPOSE A FINE,
IMPRISONMENT OR OTHER PENALTY

Your Committee interprets this guideline broadly and does not limit the term "penalty" to a penalty imposed for a breach of an express provisions in the regulation. Any monetary amount which is imposed as a deterrent against doing or failing to do something is considered to be penalty.

Ontario Regulation 94/85 amending Regulation 102 of R.R.O. 1980
under the Chiropractic Act

As described earlier, the above regulation amends certain provision in the general regulation, Regulation 102 of the R.R.O. 1980, under the Chiropractic Act.

Section 7(2) of Regulation 102, as amended, provides for increased renewal fees where renewal is made after the registration has expired. Although section 3(e) of the Act authorizes the making of regulations "providing for the annual renewal of registration and prescribing the fees to be paid therefor", your Committee was concerned that such increased renewal fees could be construed to be in the nature of a penalty for late renewal.

Counsel to the Ministry of Health has advised that the differences in late registration fees in part reflects additional administrative costs, although the Board of Regents under the Act has had no cases in recent years where late fees have been paid. Your Committee has further been advised that the Ministry has requested that the Board review its late fee policies.

Ontario Regulations 557/85 and 580/85 under the Drugless Practitioners Act

The above regulation 557/85 amends Regulation 248 of R.R.O. 1980 with respect to the fees to be paid by a chiropractor on registration and on renewal of registration.

Different fees for renewal of registration are prescribed depending on when the application for renewal is made. The fee for renewal is \$140 more if the chiropractor applies within 2 years after expiry of registration than if the renewal is made before the expiration. If the application is more than 2 years after expiry of registration the fee is \$410 more than if the renewal is made before the expiry. Your Committee was concerned that these increased fees could be construed to be in the nature of a penalty, and requested an explanation from the Ministry of Health.

Counsel to the Ministry of Health advised that the additional amounts for late registration are to cover additional administrative expenses, and added that the concern that late renewal fees are considered as a penalty will be specifically dealt with in the new statutory schemes that will be proposed for the health profession by the Health Professions Legislation Review.

APPENDIX A

TERMS OF REFERENCE

Standing Order 90(j)

- 90 (j) Standing Committee on Regulations and Private Bills to be the Committee to which all Private Bills, other than Estate Bills or Bills providing for the consolidation of a floating debt or renewal of debentures, other than local improvement debentures, of a municipal corporation, shall be referred after first reading; and, to be the Committee provided for by section 12 of the Regulations Act, and having the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:
- (1) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;
 - (2) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;
 - (3) Regulations should be expressed in precise and unambiguous language;
 - (4) Regulations should not have retroactive effect unless clearly authorized by statute;
 - (5) Regulations should not exclude the jurisdiction of the courts;
 - (6) Regulations should not impose a fine, imprisonment or other penalty;
 - (7) Regulations should not shift the onus of proof of innocence to a person accused of an offence;
 - (8) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and
 - (9) General powers should not be used to establish a judicial tribunal or an administrative tribunal;

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit. (Provisional.)

APPENDIX B

Extract from the REGULATIONS ACT, R.S.O., 1980, c. 446:

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.
- (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.
- (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.
- (4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.
- (5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

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